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Supreme Court, U.S.
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No. 99-1623

IN THE

Supreme Court of the United States

BERNITA WASHINGTON, *et al.*,

Petitioners,

v.

CSC CREDIT SERVICES, INC., EQUIFAX CREDIT INFORMATION SERVICES, INC. and EQUIFAX, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

CSC Credit Services, Inc. is a wholly-owned (directly or indirectly) subsidiary of Computer Sciences Corporation, which is a publicly held company.

Equifax Inc. is a publicly held company. There is no parent or publicly held company owning 10% or more of the stock of Equifax Inc.

Equifax Credit Information Services, Inc. is a wholly-owned subsidiary of Equifax Inc.

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SUMMARY OF THE CASE

Petitioners seek to represent a nationwide class alleging that Respondents, CSC Credit Information Services, Inc. ("CSC"), Equifax Inc., and Equifax Credit Information Services, Inc. ("ECIS"),[1] violate the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681u ("FCRA") when providing credit reports to their insurance company subscribers. In bringing this action, however, Petitioners attempt to sidestep 30 years of case law interpreting the FCRA, the Constitutional requirement of standing and Congressional intent. The Fifth Circuit recognized these legitimate obstacles to class certification and, in a carefully reasoned opinion, vacated and reversed the class certification by the district court.

ECIS and CSC are credit reporting agencies as defined by the FCRA. 15 U.S.C. § 1681a (1994 & Supp. IV 1998). As such, they assemble and provide consumer credit information to third parties that they believe have a permissible purpose to obtain the information. *See* 15 U.S.C. §§ 1681a(f), 1681b (1994 & Supp. IV 1998). The FCRA requires ECIS and CSC to implement "reasonable procedures designed . . . to limit the furnishing of consumer reports to the purposes listed under § 1681b." 15 U.S.C. § 1681e(a) (1994 & Supp. IV 1998). To that end, ECIS and CSC require each of their subscribers, at the time the Subscriber Agreement

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1. Equifax Inc. was the original defendant in the district court and was the co-appellant with CSC in the appeal to the Fifth Circuit. During the time this matter was pending before the Fifth Circuit, the district court granted Petitioners' motion to add ECIS as a co-defendant. ECIS is a wholly-owned subsidiary of Equifax Inc. and is a credit reporting agency as defined by the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681u. Equifax Inc. is simply a holding company and is not a credit reporting agency.

is signed, to provide (among other things) an initial certification (sometimes referred to as a "blanket certification"), as provided by FCRA § 1681e(a), in which the subscribers must "identify themselves, certify the purpose for which the information is sought, and certify that the information will be used for no other purpose." Nothing more is required under FCRA § 1681e(a).

Relying upon their interpretation of certain FTC commentary, Petitioners claim that ECIS and CSC's reliance upon an initial or "blanket" certification is unreasonable when the subscriber requesting a credit report is an insurance company. Federal Trade Commission Advice and Commentary on the Fair Credit Reporting Act [16 C.F.R. Part 600]. They argue instead that ECIS and CSC must obtain an individual certification of permissible purpose each and every time an insurance company seeks a report.

At its core, this case raises the above-described issue of reasonable procedures. The only issues that can be raised by Petitioners in their Petition, however, are the preliminary issues of standing, the elements of a claim under the FCRA, and the relief afforded to a private litigant under the FCRA.

The district court in its original decision and its decision on Respondents' motion for reconsideration certified a nationwide class action. *Washington v. CSC Credit Services, Inc.*, 178 F.R.D. 95 (E.D. La.), *modified on reconsideration*, 180 F.R.D. 309 (E.D. La. 1998). In its first opinion, the court certified a class under Fed. R. Civ. P. 23(b)(2) consisting of all persons whose credit reports were provided to an insurance company by ECIS or CSC in violation of 15 U.S.C. § 1681e(a). 178 F.R.D. at 103. The court ruled, erroneously, that whether or not the Petitioners' (and the class members') credit reports actually had been obtained by an insurance company without a permissible purpose was irrelevant for the purposes of

establishing liability. 178 F.R.D. at 100; 180 F.R.D. at 313. The district court concluded that any consumer whose credit report was obtained by an insurance company could state a cause of action under the FCRA against a credit reporting agency and claim that its procedures did not comply with the FCRA, whether the insurance company had a permissible purpose to obtain the credit report or not.

On the issue of standing, the district court stretched beyond the boundaries of Article III and found an injury in fact. 178 F.R.D. at 102. It found "the mere issuance of the reports themselves under improper procedures constitutes an invasion of privacy." *Id.* The court further found that because Petitioners alleged, in prior actions against the insurance companies, that the insurance companies used the credit reports to embarrass and humiliate them and to induce them to accept inadequate compensation for their claims, an injury had occurred. *Id.*

The second error made by the district court was its conclusion that injunctive relief is available to a private litigant under the FCRA. 180 F.R.D. at 312. In so finding, the district court ignored Congressional intent and the well-reasoned opinions of several district courts. Further, in its decision on reconsideration, the district court failed to apply the standard set forth in *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402 (5th Cir. 1998), for determining when injunctive relief predominates over a request for monetary relief. In the decision on reconsideration, the court reaffirmed its decision to certify a class under Fed. R. Civ. P. 23(b)(2) and, in the alternative, certified a class under Fed. R. Civ. P. 23(b)(3).

On an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), the Fifth Circuit reversed and vacated the district

court's decisions. *Washington v. CSC Credit Services, Inc.*, 199 F.3d 263 (5th Cir. 2000). Following the two district courts that previously reached the issue, the Fifth Circuit held "a plaintiff bringing a claim that a reporting agency violated the 'reasonable procedures' requirement of § 1681e must first show that the reporting agency released the report in violation of § 1681b." 199 F.3d at 267. Next, the Fifth Circuit, applying the standard set forth in this Court's decision in *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979), found that injunctive relief is not available to private litigants. 199 F.3d at 268. The court based its holding upon the language of the FCRA and the expression by Congress of its intent. Thus, after correcting the errors made by the district court, the Fifth Circuit reversed the class certification under Rule 23(b)(2), and vacated the class certification under Rule 23(b)(3).

Petitioners have articulated no compelling issue that merits review by this Court. The two previously reported decisions on the interpretation of the FCRA and the threshold showing necessary to challenge a reporting agency's procedures rejected Petitioners' analysis.[2] On the issue of injunctive and declaratory relief, Petitioners have offered no support for their contention that the Fifth Circuit erred. The Fifth Circuit adhered to this Court's precedents and Congressional intent. Lastly, Petitioners' attempt to fabricate a compelling need for the Court to address this issue is belied by the lack of litigation on the issue and the Federal Trade Commission's jurisdiction over credit reporting agencies under the FCRA.

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2. The previous decisions are *Andrews v. Trans Union Corp.*, 7 F. Supp. 2d 1056 (C.D. Cal. 1998), and *Middlebrooks v. Retail Credit Co.*, 416 F. Supp. 1013 (N.D. Ga. 1976).

1. The Fifth Circuit followed precedent and Congressional intent by holding that a consumer must demonstrate an injury (*i.e.*, the disclosure of his report for an impermissible purpose) before challenging a credit reporting agency's procedures.

The FCRA requires credit reporting agencies to "maintain reasonable procedures designed . . . to limit the furnishing of consumer reports to the purposes listed under section 1681b." 15 U.S.C. § 1681e(a) (1994 & Supp. IV 1998). The Fifth Circuit correctly reasoned that "this purpose is not furthered unless a plaintiff suffers the harm the procedures are meant to prevent." 199 F.3d at 266.

In reviewing the "harm" Congress intended to prevent, the Fifth Circuit reviewed Congress' statements on the purpose for enacting the FCRA:

> Similarly, Congress has stated that it adopted the "reasonable procedures" requirement to "meet[] the needs of commerce for consumer credit . . . in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." 15 U.S.C. § 1681(b). Congress identified actual injuries — including breaches of "confidentiality" and "[im]proper utilization" — which only occur if there is an improper disclosure, suggesting that a general claim of improper procedures is by itself inadequate. *Id.*
>
> In light of the purposes of the FCRA, we find that the actionable harm the FCRA envisions is improper disclosure, not the mere risk of improper

> disclosure that arises when "reasonable procedures" are not followed and disclosures are made.

199 F.3d at 266-67 (alterations in original).

The Fifth Circuit's interpretation is consistent with the decisions of the only other courts to reach the issue. *Andrews v. Trans Union Corp.*, 7 F. Supp. 2d 1056, 1067 (C.D. Cal. 1998) ("it makes no sense for a consumer whose file was disclosed only for permissible purposes to nevertheless be able to challenge the reasonableness of the consumer reporting agency's procedures."); *Middlebrooks v. Retail Credit Co.*, 416 F. Supp. 1013, 1016 (N.D. Ga. 1976) ("once it is shown that the information was relevant and for a permissible purpose, this court need not inquire into the reasonableness of the underlying procedures adopted by the agency to assure that the information will be furnished for [permissible] purposes").

Other courts' interpretation of a related subsection of the FCRA, § 1681e(b), further supports the Fifth Circuit's decision. Section 1681e(b) requires credit reporting agencies to maintain reasonable procedures to assure the maximum possible accuracy of the information concerning the individual about whom the report relates. Courts applying § 1681e(b) uniformly limit recovery to cases where the failure to adopt procedures causes actual harm (*i.e.*, the release of an inaccurate report) to the consumer.[3]

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3. *See, e.g.*, *Spence v. TRW, Inc.*, 92 F.3d 380, 382 (6th Cir. 1996); *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995); *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994); *Cahlin v. General Motors Acceptance Corp.*, (Cont'd)

Finding that Congress' intent was to limit actions to those who had suffered actual harm, the Fifth Circuit did not reach the issue of Constitutional standing. Petitioners' attempt to expand the FCRA beyond this clear limit, however, would result in expanding standing beyond the limits imposed by Article III. Petitioners' argument that a consumer need not show an impermissible disclosure to bring suit suffers from the infirmity that such a consumer has not suffered an injury in fact. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103-04 (1998) ("there must be alleged (and ultimately proven) an injury in fact — a harm suffered by the plaintiff that is concrete and actual or imminent not conjectural or hypothetical") (internal

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(Cont'd)

936 F.2d 1151, 1156 (11th Cir. 1991); *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37, 39 (D.C. Cir. 1984); *Todd v. Associated Credit Bureau Servs., Inc.*, 451 F. Supp. 447, 449 (E.D. Pa. 1977), *aff'd*, 578 F.2d 1376 (3d Cir. 1978); *Peller v. Retail Credit Co.*, Civ. A. No. 17900 (N.D. Ga. Dec. 6, 1973), *aff'd memo*, 505 F.2d 733 (5th Cir. 1974); *LeCompte v. Credit Bureau of Baton Rouge, Inc.*, Civ. A. No. 95-2019, 1996 WL 255923, *2 (E.D. La. May 13, 1996); *Whelan v. Trans Union Credit Reporting Agency*, 862 F. Supp. 824, 829 (E.D.N.Y. 1994); *Grant v. TRW, Inc.*, 789 F. Supp. 690, 692 (D. Md. 1992); *Boothe v. TRW Credit Data*, 768 F. Supp. 434, 437 (S.D.N.Y. 1991); *Grays v. Trans Union Credit Info. Co.*, 759 F. Supp. 390, 393 (N.D. Ohio 1990); *Houston v. TRW Info. Servs.*, 707 F. Supp. 689, 691 (S.D.N.Y. 1989); *Altmanshofer v. TRW, Inc.*, 95 B.R. 729, 730 (C.D. Ca. 1988); *Watson v. Credit Bureau, Inc.*, 660 F. Supp. 48, 50 (S.D. Miss. 1986); *Lowry v. Credit Bureau, Inc.*, 444 F. Supp. 541, 544 (N.D. Ga. 1978); *McPhee v. Chilton Corp.*, 468 F. Supp. 494, 497 (D. Conn. 1978); *Roseman v. Retail Credit Co.*, 428 F. Supp. 643, 646 (E.D. Pa. 1977); *Pendleton v. Trans Union Sys. Corp.*, 76 F.R.D. 192, 195 (E.D. Pa. 1977); *Austin v. BankAmerica Serv. Corp.*, 419 F. Supp. 730, 733 (N.D. Ga. 1974).

quotations omitted).[4] Article III, of course, requires such an injury. Petitioners' erroneous interpretation leaves out this fundamental tenet of standing.

The Fifth Circuit's interpretation properly balances the purposes of the FCRA with the necessities of modern commerce. Its interpretation does not in any way prevent an injured plaintiff from suing a credit reporting agency. Moreover, despite Petitioners' rhetoric, a court cannot sacrifice the proper interpretation of a statute to relax the rigorous demands of Rule 23. Whether or not a class action can be certified under the Fifth Circuit's interpretation of the FCRA is irrelevant — the only question that is relevant is whether the Fifth Circuit's interpretation is correct. And based upon this Court's precedents, Congressional intent, and prior consistent court opinions, the Fifth Circuit's holding is correct.

2. The Fifth Circuit applied the correct legal standard in holding that injunctive relief is not available to private litigants under the FCRA.

In addressing the issue of injunctive relief, the Fifth Circuit recognized and applied the standard established in this Court's seminal decision of *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) — "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." 199 F.3d at 268. The Fifth Circuit then considered "whether Congress 'clearly and unambiguously limited the court's equity jurisdiction' under the FCRA." 199 F.3d at 268.

4. Petitioners' reliance on a threat of imminent harm is completely unsupported by the Record and not alleged by the Petitioners in their Complaint. Further, neither the District Court nor the Fifth Circuit made any finding of imminent harm.

The Fifth Circuit began by examining the language and framework of the FCRA. Section 1681p of the FCRA gives courts jurisdiction over "[a]n action to enforce any liability created under this subchapter." The term liability is discussed in the FCRA's civil liability provisions (§§ 1681n-1681o), both of which expressly refer to damages and attorneys fees without mentioning injunctive relief. The court considered this omission significant "because the Act elsewhere expressly grants the power to obtain injunctive relief to the FTC." 199 F.3d at 268 (*citing* FCRA, 15 U.S.C.A. § 1681s(a) (West 1998 & Supp. IV 1999)).

While finding the affirmative grant of power to the FTC to pursue injunctive relief coupled with the absence of a similar grant to private litigants dispositive of the issue, the Fifth Circuit cited further evidence to support its holding. As part of the 1996 amendments to the FCRA, Congress enacted § 1681u, which requires reporting agencies to disclose consumer information to the FBI "for counterintelligence purposes." This section provides consumers not only with a damages remedy, it specifies, "[i]n addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section." 15 U.S.C. § 1681u(m) (1994 & Supp. IV 1998). Thus, the Fifth Circuit continued, "where Congress intended to allow private injunctive relief under the FCRA, it expressly stated that the relief was available[; t]his language would be unnecessary if injunctive relief were otherwise available." 199 F.3d at 269.

To read the statute as requested by Petitioners would fail to give effect to the specific grant of the right to injunctive relief in § 1681u. *See Bates v. United States*, 522 U.S. 23, 29 (1997) ("[w]here Congress includes particular language

in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion"); *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972) ("words in statutes should not be discarded as 'meaningless' and 'surplusage' when Congress specifically and expressly included them, particularly where the words are excluded in other sections of the same act"). The only way to give meaning to all of the words of § 1681u is to find, as did the Fifth Circuit, that injunctive relief is not available to private litigants bringing actions under §§ 1681n and 1681o. Petitioners offer no explanation for the difference in language between § 1681n and § 1681o as compared to § 1681u, nor can they.

The Fifth Circuit did note the split in authority at the *district court* level on this issue.[5] The circuit court conflict alluded to by Petitioners, however, is illusory. In *Greenway v. Information Dynamics, Ltd.*, 399 F. Supp. 1092 (D. Ariz. 1974), *aff'd on other grounds*, 524 F.2d 1145 (9th Cir. 1975), the district court granted plaintiff's request for an injunction. There is no discussion by the district court of the availability

5. *Compare Bumgardner v. Lite Cellular, Inc.*, 996 F. Supp. 525, 526-27 (E.D. Va. 1998) (holding that it lacked the power to grant a private litigant's request for injunctive relief under the FCRA); *Ditty v. Checkrite, Ltd.* 973 F. Supp. 1320, 1338 (D. Utah 1997) (same); *Mangio v. Equifax, Inc.*, 887 F. Supp. 283, 284-85 (S.D. Fla. 1995) (same); *Kekich v. Travelers Indem. Co.*, 64 F.R.D. 660, 668 (W.D. Pa. 1974) (same) with *Andrews*, 7 F. Supp. 2d at 1084 & n.33 (concluding that the FCRA "does allow injunctive relief on the plaintiff's own behalf"); *Greenway v. Information Dynamics, Ltd.*, 399 F. Supp. 1092, 1096-97 (D. Ariz. 1974) (certifying a class action on a claim for injunctive relief under the FCRA and granting preliminary injunctive relief), *aff'd on other grounds*, 524 F.2d 1145 (9th Cir. 1975).

of an injunction under the FCRA, nor does it appear that the issue was contested by the defendants. The Ninth Circuit, likewise, did not discuss the issue because the only issue raised by the appellant was whether it was a credit reporting agency. 524 F.2d 1145, 1146 (9th Cir. 1975). Thus, the "conflict" relied on by Petitioners does not exist. The Fifth Circuit is the first circuit to review this issue.

3. The Fifth Circuit correctly concluded that Petitioners could not maintain a Rule 23(b)(2) class seeking declaratory relief.

In reversing the Rule 23(b)(2) class with respect to Petitioners' request for declaratory relief, the Fifth Circuit identified two fatal flaws in Petitioners' analysis.

First, Rule 23(b)(2) specifically provides that a class action can be certified where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, *thereby making appropriate final injunctive relief or corresponding declaratory relief* with respect to the class as a whole." (Emphasis added.) The Advisory Committee Notes state that "[d]eclaratory relief 'corresponds' to injunctive relief when as a practical matter it affords injunctive relief or serves as a basis for later injunctive relief." Advisory Committee Notes to 1966 Amendment to Fed. R. Civ. P. 23.

The Fifth Circuit correctly concluded that certifying a class pursuant to Rule 23(b)(2) "would frustrate the FCRA's limitation of injunctive relief to the FTC." 199 F.3d at 269. "Unable to obtain injunctive relief directly, consumers could attempt to obtain it indirectly by obtaining declaratory relief solely for the purpose of later prompting the FTC to move for injunctive relief." *Id.*

Petitioners' reliance on the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, is misplaced.[6] The Declaratory Judgment Act "was enacted to afford an added remedy to one who is uncertain [of] his rights and who deserves an early adjudication without having to wait until he is sued by his adversary." *Leven Metals Corp. v. Parr-Richard Terminal Co.*, 799 F.2d 1312, 1315 (9th Cir. 1986) (citations omitted). The remedy available under the Act "is intended to minimize the danger of avoidable loss and the unnecessary accrual of damages and to afford one threatened with liability an early adjudication without waiting until his adversary should see fit to begin an action after the damage has accrued." 10 Charles Alan Wright, *et al.*, *Federal Practice and Procedure* § 2751, at 456-57 (3d ed. 1998) (footnotes omitted).[7]

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6. As a preliminary matter, Petitioners raise the Declaratory Judgment Act for the first time in their Petition. This issue was not briefed before the District Court or the Fifth Circuit. It did not serve as the basis of either court's decision. Thus, this issue cannot be raised for the first time on appeal.

7. *United Food and Commercial Workers Local Union 137 v. Food Employers Council, Inc.*, 827 F.2d 519 (9th Cir. 1987), is inapplicable. In *United Food*, the plaintiff union sought an injunction and declaratory judgment under the Clayton Act declaring a "most-favored nations" clause in a collective-bargaining agreement void. The court determined that the plaintiff union lacked standing to seek an injunction under the Clayton Act. *Id.* at 522. Moving to the issue of declaratory relief, the court found that the plaintiff union was in a position of uncertainty with respect to the clause and risked suits from other employers given its inability to determine its rights under the agreement at issue. *Id.* at 523-24. The court further held that allowing the plaintiff union to seek such a declaration did not conflict with the reasons for limiting injunctive relief under the Clayton Act.

(Cont'd)

Here, neither Petitioners nor the putative class members are in danger of being sued or require an early adjudication of their rights. Further, their request for declaratory relief conflicts with the FCRA's limitation on injunctive relief. Thus, declaratory relief in this case would serve none of the purposes of the Declaratory Judgment Act. Petitioners' request was properly denied.

The second flaw identified by the Fifth Circuit with respect to declaratory relief is the district court's conclusion that such relief was the predominant form of relief requested. Petitioners' attempt to identify error in the Fifth Circuit's analysis fails.

The Fifth Circuit in reviewing this issue relied upon its decision in *Allison*, 151 F.3d 402. This decision, as Petitioners concede, follows the majority of circuit courts, which have adopted the Advisory Committee's position and allowed monetary relief to be obtained in a Rule 23(b)(2) class action so long as the predominant relief sought by the class is injunctive or declaratory. *See* Petition, p. 20, and cases cited therein. Petitioner did not identify any contrary law. There is no issue of unsettled law.

Petitioners' real argument is that the Fifth Circuit's application of its own precedent was erroneous. Petitioners are incorrect.

(Cont'd)

Id. at 524-25. In essence, the court held that a party to a contract should be able to seek a declaration with respect to its rights under the contract. *Id.* at 525. Here, we have no contract between the parties to be interpreted. Further, as found by the Fifth Circuit, the limitation placed on injunctive relief by the FCRA would conflict with and be frustrated by a private suit for declaratory relief. 199 F.2d at 269.

In *Allison*, the Fifth Circuit held "monetary relief predominates in (b)(2) class actions unless it is incidental to requested injunctive or declaratory relief." 151 F.3d at 415. This means that monetary damages must "flow directly from liability to the class as a whole on the claims forming the basis of the injunctive or declaratory relief" and must not depend "on the intangible subjective differences of each class member's circumstances" or "require additional hearings to resolve the disparate merits of each individual's case." *Id.*

Here, separate trials would be required to determine the individual class member's damages because the circumstances surrounding each class member's situation would have to be reviewed to establish actual damages. "The money damages in this case do not flow from declaratory relief but require separate adjudication." 199 F.3d at 269.[8] Therefore, under *Allison*, declaratory relief is not the predominant relief sought. The Fifth Circuit's analysis of this issue is correct.

Petitioners' continued reliance on the district court's opinions is misplaced. The district court in deciding this issue failed to apply the standard enunciated in *Allison*. Moreover, the district court specifically found that should a finding be made that ECIS and CSC had negligently failed to comply with the FCRA, separate trials would be required to determine actual damages. 180 F.R.D. at 314. If the alleged noncompliance were found to be willful, some class members would pursue actual damages, while others would pursue

8. Further, the Fifth Circuit found that "[i]t is counterintuitive to say that in their [Petitioners'] case, declaratory relief, which might hypothetically be used as the basis for future action by the FTC, 'predominates' over monetary relief, which will directly and immediately benefit them." 199 F.3d at 269.

statutory damages. This would also require separate trials, as a review of each class member's circumstances would be required for a determination of statutory, actual and punitive damages.[9]

4. There are no other reasons for review.

Petitioners' continued insistence upon the importance of these issues is belied by the paucity of litigation regarding the procedures at issue. No overwhelming number of cases on the issue have been commenced. Three cases have been filed against credit reporting agencies on this issue, all in the Eastern District of Louisiana — interestingly all were filed by the Petitioner's co-counsel.[10]

Congress has been vigilant in its efforts to regulate the credit reporting agencies. The FCRA, enacted in 1970, has been amended on several occasions to keep pace with the changes and advancements in technology. In 1996, the FCRA was significantly amended to further protect the interests of consumers.

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9. Unlike the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o which specifically provides for class damages (§ 1692k(a)(2)(B)), the FCRA does not specify "class" damages.

10. *LeBlanc v. Trans Union Corp.*, No. 98-2081 (E.D. La.); *Norris v. Experian Info. Solutions, Inc.*, No. 99-2580 (E.D. La.); *White v. Imperial Adjustment Corp., Imperial Fire and Cas. Co., Equifax Credit Info. Serv., Inc. and Equifax Inc.*, No. 99-3804 (E.D. La.). Any attempt by Petitioners to characterize this as a "negative value suit" is not well-founded. Even if the claim is small, the FCRA provides for recovery of reasonable attorneys' fees in the case of a successful action, which eliminates a financial barrier that make individual lawisuts unlikely or unfeasible. *See Allison*, 151 F.3d at 420; *Castano v. American Tobacco Co.*, 84 F.3d 734, 748 (5th Cir. 1996) (*citing Boggs v. Alto Trailer Sales, Inc.*, 511 F.2d 114, 118 (5th Cir. 1975) (acknowledging that the availability of attorneys' fees is a common basis for finding non-superiority of a class action)).

Moreover, Congress gave the FTC enforcement authority to ensure compliance with the FCRA. The FTC has been an aggressive enforcer of the FCRA, bringing various proceedings against credit reporting agencies. *See, e.g., In the Matter of Trans Union Corp.*, Docket No. 9255, (FTC Feb. 10, 2000); *In the Matter of Equifax Credit Info. Serv., Inc.*, Docket No. C-3611, (FTC Aug. 14, 1995).

Petitioners would have this Court believe that the Fifth Circuit's decision leaves consumers with no remedy. That simply is not true. All consumers maintain their rights to seek redress for actual injuries. Moreover, the FTC has fulfilled and continues to fulfill its mission to enforce the FCRA. The Fifth Circuit's decision leaves both mechanisms in place.

CONCLUSION

For the foregoing reasons, review by this Court is unnecessary, and the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit should be denied.

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